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October 29, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal
Date of Filing: September 22, 2004
Case No.: TIA-0214

XXXXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for DOE assistance in filing for state workers' benefits. The OWA referred the application to an independent Physician Panel (the Panel), which determined that the Applicant's illnesses were not related to his work at the DOE. The OWA accepted the Panel's determination, and the Applicant filed an Appeal with the DOE's Office of Hearings and Appeals (OHA), challenging the Panel's determination. As explained below, we have concluded that the appeal should be granted and the application remanded to the OWA.

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE.¹

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel

¹ The Department of Labor administers the other program. See 10 C.F.R. Part 30; www.dol.gov.esa.

assesses whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385(d)(3). In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program.²

B. Procedural Background

The Applicant was employed as an operator, supervisor and an administrator at Paducah Gaseous Diffusion Plant (the Plant). He worked at this Plant for approximately 28 years, from 1976 to the present.

The Applicant filed an application with the OWA, requesting that a physician panel review his claims of asbestosis and masses in the upper and lower left lung. The Applicant asserted that his illnesses were due to his exposure to toxic and hazardous materials and chemicals in the Plant buildings in which he worked. The Physician Panel rendered a negative determination with regard to both illnesses. The OWA accepted the Physician Panel's negative determinations, and the Applicant filed the instant appeal challenging the negative determination regarding asbestosis.

II. Analysis

The Physician Panel Rule provides for OWA submission to the panel of records gathered during the case development process. 10 C.F.R. §§ 852.4 to 852.6. In his appeal, the Applicant contends that the Physician Panel did not review all the medical records that he submitted and, in particular, the records of his March 2002 thoracotomy at Vanderbilt

² See www.eh.doe.gov/advocacy.

University Medical Center. The Applicant is correct. The file indicates that the Applicant provided the Vanderbilt documents, but that they were not included in the record.³ Therefore, the Physicians Panel did not review these records. Moreover, the record indicates that these medical documents were potentially relevant to the Panel's evaluation. The Panel noted the absence of the Vanderbilt records. Further, the panel stated that although there was "no medical evidence supporting the disease of asbestosis," "more information" or "future testing [providing] more definitive results" would warrant reevaluation.⁴

Based on the foregoing, the application should be remanded to the OWA for further processing. We will forward a copy of the Vanderbilt records to the OWA so that the application, supplemented with this material, may receive further consideration. If the Applicant possesses new medical records with respect to his claim of asbestosis, he should consider submitting them to the OWA.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0214 be, and hereby is, granted as set forth in Paragraph 2 below.
- (2) The Application that is the subject of this Appeal is remanded to the Office of Worker Advocacy for further processing.
- (3) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 29, 2004

³ See Statement by Applicant Reviewing the Record of an Office of Worker Advocacy Application (Form 350.8).

⁴ See OWA Physician Panel Report, at 3.